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SUBPART 5316.2—FIXED-PRICE CONTRACTS

5316.203 Fixed-price contracts with economic price adjustment.

5316.203-1 Description.

(c) *Adjustments based upon cost indexes of labor or material.* Recognized adjustments based upon cost indexes of labor and material are the abnormal escalation index method and the constant dollar index method.

(1) Under the abnormal escalation index method, the schedule price is based on all costs reasonably expected to be incurred during the scheduled period of performance considering economic trends that can be predicted with a reasonable degree of confidence. The price adjustment is determined by the difference between forecast and actual index values at the scheduled completion of performance, or at stated times.

(2) Under the constant dollar index method, the schedule price is expressed in base year dollars. The price adjustment is determined by the difference between base year index values and actual index values at the scheduled completion of performance, or at stated times. A constant dollar economic price adjustment (EPA) clause index method may be used only after it has been determined that the use of an abnormal escalation index method EPA clause would not be appropriate.

5316.203-2 Application.

Priced options are considered part of the period of contract performance when considering stability of market or labor conditions that will exist during an extended period of contract performance.

5316.203-4 Contract clauses.

(a)(2) When necessary to provide for price adjustment of helium based on Bureau of Mine Price Standards, the contracting officer may insert a clause substantially the same as the clause at 5352.216-9000, Adjustment For Helium Sale Price Revision, in solicitations and contracts with a helium requirement.

(d) *Adjustments based on cost indexes of labor or material.*

(2) Air Force procedures for clause approval:

(i) All cost or price index method EPA clauses shall be approved by the chief of the contracting office.

(ii) Cost index EPA clauses will provide for price adjustment only if the differences between the forecasted (for abnormal escalation clauses) or base year (for constant dollar clauses) index values and the actual index values exceed a predetermined threshold. This threshold will normally be established in terms of a percentage deviation from the forecasted or base year index values. The size of the threshold will be established on the basis of individual acquisition and economic conditions. However, appropriate considerations include minimizing administrative costs, avoiding adjustments for insignificant aberrations in the indexes, and providing for a reasonable assumption of risk by both the contractor and the Government.

(iii)(A) When using the abnormal escalation index method on contracts in excess of \$50 million, the clause shall provide that the contracting officer may adjust the contract value as result of the compounding effect that use of actual indices may have on the scheduled price for future periods. Any provisional adjustments made to future period costs shall be calculated using the same percentage decrease (or increase) as was made in the adjustment for the completed period. Provisional adjustments for each period must be liquidated against the final adjustment for each period. For example, the following formula could be used in computing adjustments:

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$$\text{Adjustment} = ((x - y) / y) [z] - s$$

where x = actual index

y = projected index

z = sum of dollars subject to adjustment for all periods
in which a final adjustment has not been made

s = sum of unliquidated provisional adjustments

(B) For those EPA clauses which include a dead band in which no adjustment is made, the upper end of the dead band becomes the projected index value during times of increasing inflation, and the lower end of the dead band becomes the projected index value during times of decreasing inflation. For those EPA clauses which provide for price adjustments only if the difference between the projected index value exceeds a predetermined threshold (trigger bands), no adjustment will be made for the future periods unless the actual index value exceeds the predetermined threshold. However, when the actual index exceeds the projected index by the predetermined threshold, then an adjustment must be made to future periods.

(C) This requirement is optional for multinational contracts where the impact of multiple country index recalculations are extremely complex.

5316.205 Fixed-price contracts with prospective price redetermination.

5316.205-3 Limitations.

Solicitations contemplating the use of fixed-price contracts with prospective price redetermination shall be approved by SAF/AQC before issuance. Approval requests shall explain why alternate type contracts such as fixed-price-incentive (successive targets) are considered to be inappropriate.

5316.207 Firm-fixed-price, level-of-effort term contracts.

5316.207-2 Application.

In each firm-fixed-price, level-of-effort (FFPLOE) contract over \$100,000, the contracting officer shall require the contractor to maintain all necessary records of the actual level of effort provided and make such records available for inspection by the contracting officer or designee. Such inspection may be visual, by audit, or other reasonable means as deemed necessary by the contracting officer. Contracting officers may include this requirement in FFPLOE contracts of \$100,000 or less.

5316.207-3 Limitations.

(a) A FFPLOE type contract shall not be used in acquisitions over \$100,000, unless other contract types are clearly not appropriate and the rationale for its use is included in the approval of the chief of the contracting office.

(b) In no event may the following special price adjustment provisions be used with FFPLOE contracts without obtaining a deviation from FAR 16.207: (1) any provision which would adjust the contract price proportionally when actual hours (or other measure of time) expended differ from the number required by the contract; and (2) any provision which adjusts the initial definitive contract price so that the final price paid is the total actual allowable cost plus a predetermined profit amount.

5316.207-90 Contract administration.

The contracting officer shall request the administrative contracting officer to administer each FFPLOE contract as if it were a time-and-materials contract; except that the request need not be made on actions \$100,000 or less if the contracting officer determines the circumstances of the acquisition do not justify additional surveillance and the contract file is so documented.

5316.290 Payment procedures and economic price adjustments for fixed-price contracts using the cost index method of EPA.

(a) *Fixed-price incentive contracts.*

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(1) Normally within 30 days after actual index values required by the EPA clause become available, the contracting officer shall calculate the amount of the EPA, advise all interested parties, and initiate a supplemental agreement with the contractor to recognize the EPA, unless otherwise required by the EPA clause.

(2) The calculated EPA shall be applied to the contract target cost, contract target price, and contract ceiling price as required by the EPA clause.

(3) The EPA and the Incentive Price Revision (IPR) clauses shall operate independently. As such, price adjustments under the EPA clause will not require special actions to adjust billing prices. Billing prices shall be handled strictly in accordance with the Incentive Price Revision clause. However, despite the operative independence of these two clauses, a significant EPA may signal that the contractor's actual cost experience is also deviating significantly from target and that the adequacy of the current billing prices should be investigated. It may also be an indication that the alternate progress payment liquidation rate should be increased.

(4) In investigating the estimated actual cost at completion pursuant to the Incentive Price Revision clause, economic forecasts developed in connection with previous EPA analyses may be used as one of the factors considered in revising the estimated actual cost to complete projections. Because of the difficulty of separating inflationary effects from other factors involved in actual cost changes, all factors must be considered in arriving at a revised total cost projection upon which to base a change in billing prices/unit prices for payment purposes. If the estimated actual cost at completion is substantially greater than target cost, a change in billing price may be negotiated in accordance with the IPR clause.

(b) *Firm-fixed-price contracts.* Normally within 30 days after actual index values required by the EPA clause become available, the contracting officer shall calculate the amount of the EPA, advise all interested parties, and initiate a supplemental agreement with the contractor to recognize the EPA, unless otherwise required by the EPA clause.

SUBPART 5316.3—COST-REIMBURSEMENT CONTRACTS

5316.306 Cost-plus-fixed-fee contracts.

(c)(2) The contracting officer is the "designee" for signing Determination and Findings establishing the basis for application of the statutory price or fee limitation.

SUBPART 5316.4—INCENTIVE CONTRACTS

5316.403 Fixed-price incentive contracts.

(c) *Billing prices.* When actual cost performance data is not directly reported to the contracting officer and the administrative contracting officer (ACO) has sufficient knowledge of such data, the contracting officer shall, whenever possible, delegate to the ACO authority to negotiate downward adjustments in billing prices (see FAR 42.302 (b)(6)). Contracting officers shall retain the authority to negotiate upward adjustments in billing prices.

SUBPART 5316.5—INDEFINITE-DELIVERY CONTRACTS

5316.503 Requirements contracts.

(d) *Limitations on use of requirements contracts for advisory and assistance services.*

(1) The contracting officer makes the determination in FAR 16.503 (d)(1) and shall include a copy with the acquisition plan or single acquisition management plan when it's processed for approval.

(2) The contracting officer makes the determination in FAR 16.503 (d)(2) when the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

5316.504 Indefinite-quantity contracts.

(a) *Description.* The rules for indefinite-quantity contracts also apply to indefinite-quantity contract line item numbers (CLINS) contained in other types of contracts.

(b) *Application.* Funds are obligated by each order, including the minimum, not by the contract itself.

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(c)(2)(A) The contracting officer makes the determination in FAR 16.504 (c)(2)(A) and shall include a copy with the acquisition plan or single acquisition management plan when it's processed for approval.

(c)(2)(B) The Source Selection Authority makes the determination in FAR 16.504 (c)(2)(B) if, after evaluation of proposals, only one offeror is capable of providing the services.

(c)(2)(C)(ii) The contracting officer makes the determination in FAR 16.504 (c)(2)(C)(ii) when the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

5316.505 Ordering.

(a)(2) The contracting officer is the duly appointed ordering officer in FAR 16.505 (a)(2).

(b)(4) The head of the agency has designated the Air Force Competition Advocate General as the task order contract and delivery order contract ombudsman. This responsibility has been further delegated to the procuring activity competition advocates.

(c) *Limitation on ordering period for task order contracts for advisory and assistance services.*

(1) The contracting officer makes the determination in FAR 16.505 (c)(1).

(2) The contracting officer makes the determination in FAR 16.505 (c)(2).

5316.505-90 Decentralized ordering.

(a) For contracts that authorize decentralized ordering (i.e., ordering by a contracting office at any other location), the contracting officer with overall responsibility for the contract shall:

(1) Ensure that adequate control procedures are in place before any orders are authorized; and

(2) Exercise oversight of decentralized ordering throughout the period of performance under the contract to ensure that the procedures are followed.

(b) The control procedures shall ensure that ordering offices adhere to contract terms and conditions and prevent or identify any abuses, such as issuance of orders for items that are not covered in the basic contract. Control procedures should be tailored to the given circumstances. Generally, the control procedures should:

(1) Establish clearly defined line items;

(2) Place monetary limits on unpriced line items and other direct costs;

(3) Identify the contracting offices that are authorized to place orders and establish an aggregate order ceiling for each; and

(4) Require all decentralized orders to be submitted to the contractor through the contracting officer with overall responsibility for the contract. As an alternative, the responsible contracting officer may exercise control by issuing control numbers to each authorized ordering office. Control numbers may be transmitted by telephone or in writing.

(c) In exercising oversight, the responsible contracting officer shall:

(1) Review and track all orders placed under the contract to ensure that all items ordered are covered by the basic contract and that monetary limitations for each order and ordering office aggregates are not exceeded. The contracting officer shall not rely on status reports furnished by the contractor as the sole means of tracking orders; and

(2) Conduct periodic management reviews to identify and correct any process or ordering deficiencies.

(d) The order initiating contracting officer shall:

(1) Be responsible for ensuring all orders adhere to contract terms and conditions, that oversight of contractor performance is maintained, and that reporting to the responsible contracting officer is accomplished as required;

(2) Submit a duplicate copy of each executed order, at the time of execution, to the responsible contracting officer; and

(3) Submit a duplicate copy of each order modification, at the time of execution, to the responsible contracting officer.

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5316.506 Solicitation provisions and contract clauses.

The contracting officer shall insert a clause substantially the same as the clause at 5352.216-9001, Awarding Orders Under Multiple Award Contracts, in solicitations and contracts for multiple award task and delivery order contracts.

SUBPART 5316.6—TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

5316.603 Letter contracts.

5316.603-2 Application.

- (c) See Subpart 5317.74 for policy and procedures pertaining to undefinitized contractual actions.

SUBPART 5316.7—AGREEMENTS

5316.703 Basic ordering agreements.

- (c) *Limitations.*

(1) Basic ordering agreements shall not be used for the acquisition of major systems, major modifications, or major operation and maintenance (O&M) programs. This prohibition does not apply to orders for the repair of battle or crash damaged aircraft.

(2) To minimize the number of BOAs with an individual contractor, BOAs shall provide for the purchase of authorized supplies and services covering as wide a range as practicable. Separate BOAs may be negotiated when the pricing arrangement will be on other than a firm-fixed-price basis, when it is necessary to restrict the use of the BOA to the acquisition of specific supplies or services, or when it is necessary to authorize the administrative contracting officer to issue orders.

(3) An activity having a requirement for a BOA is responsible for assuring that a BOA has not already been issued which will satisfy its requirement.

(d) *Orders.* Each BOA shall include a provision that requires the contractor to submit a price proposal for any unpriced orders, normally within 30 days after receipt of the order, but no later than 60 days after receipt. If the contracting officer determines that a longer period is necessary, the contract file shall be so documented. See Subpart 5317.74 concerning undefinitized contractual actions.

SUBPART 5316.90—REQUIREMENTS AND INDEFINITE-QUANTITY CONTRACTS

5316.9000 Definition.

“Technical direction,” as used in this subpart, means the advisory process by which the contracting officer’s designated representative provides clarification to a contractor for accomplishing work under an order. Technical direction may be oral or in writing, but cannot, in itself, be contractually binding nor may it change the terms or conditions of the contract or order.

5316.9001 Policies.

- (a) Requirements or indefinite-quantity contracts shall not be used:

(1) As a substitute for fully defining and pricing contract requirements or options prior to contract award, when it is feasible to do so; or

(2) When the definition of work that may be performed is excessively broad or fails to specify performance requirements.

(b) Orders may not be used to increase the scope, period of performance, or maximum dollar value of the basic contract. Such changes shall be made only by modifying the contract after obtaining appropriate justifications and approvals. Changes to individual orders may be made by modification to the order or by issuance of a new order, as appropriate.

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5316.9002 Procedures.

- (a) When issuing orders, the contracting officer shall:
 - (1) Ensure all orders and changes to an order are within the scope of the contract;
 - (2) In cost-reimbursement orders, establish in the order or contract a maximum fee that can be earned to avoid a cost-plus-percentage-of-cost arrangement;
 - (3) Use a standard form (e.g., the DD Form 1155) establishing a unique serial number and referencing the contract line item or subline item under which the order is being placed; and
 - (4) Document in the contract file, when multiple award contracts are involved, the basis for decisions resulting in the award of each order to a particular contractor. This decision should include documentation the contracting officer determines necessary to support the decision.
- (b) Prior to award of a requirements or indefinite-quantity contract, the contracting officer shall establish procedures for users to request the issuance, award, or modification of an order.
- (c) During performance of a requirements or indefinite-quantity contract, the contracting officer shall:
 - (1) Track the total of awards by Accounting Classification Reference Numbers (ACRN) and periodically review these to ensure the overall contract funding status or obligation/expenditure levels are appropriate for the contract; and
 - (2) Monitor contractor performance to ensure the required services (i.e., labor mix and type of effort) are being provided.